GRASSROOTS JOURNALS
ISSN 2564-212X
04(02) | December 2024

JOURNAL OF POLICY & GOVERNANCE
Published by The Grassroots Institute, Canada
In partnership with:
Lviv Polytechnic National University, Ukraine
Website: http://grassrootsjournals.org/jpg

M – 00437 | Analytical Article

Appraisal of the Right of Women to Inheritance in African Society under Customary Law

Enakireru Eric Omo*[1], Edewor Tony Omonemu[2]
[1]Department of Public Law, Faculty of Law, University of Delta, Agbor, Delta State, Nigeria.
E-mail: eric.onakireru@unidel.edu.ng | ORCID: https:// orcid.org/0009-0002-8347-1598
[2]Department of Public Law, Faculty of Law, University of Delta, Agbor, Delta State, Nigeria.
E-mail: omonems@gmail.com | ORCID: ORCID: https://orcid.org/0009-0001-1078-8263
**Corresponding author*

ABSTRACT

Despite the Clear and unambiguous provisions of Section 42 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended 2011), which prohibits the discrimination of women on the ground of sex or gender, and most international and regional instruments some of which have been adopted and ratified by some Africa countries including Nigeria, Nigeria is bedeviled with some systems of customary laws that cut across almost all the ethnic groups disallowing women from inheriting their father's house or their deceased husband. In the case of the customary law of inheritance in Delta state of Nigeria, many other tribal communities practice where women are viewed as part of the husband's chattel to be shared. This article adopts the doctrinal method on the sources of the law and the interpretation and analysis of relevant conventions and regulations through critiquing existing legal tools on the subject of women's inheritance under African indigenous law. This article seeks to enlighten the readers on the challenges that women in Nigeria face as a result of discriminatory customary practices. This article explores inheritance laws in Nigeria, with a focus on women's rights and potential gender bias. It examines whether women have the right to inherit property from deceased male relatives, examining their treatment under customary, statutory, and Islamic law. Furthermore, it evaluates the socioeconomic effects of women's empowerment while reviewing implemented measures and analyzing recent judicial decisions. The article concludes with recommendations for legal reforms.

Keywords: African indigenous law; Discrimination; Inheritance; Women; Succession rites

Received: 23 August 2024
Reviewed: 17 September 2024
Accepted: 30 September 2024
Published: 14 December 2024

Executive Chief Editor
Dr. Hasrat Arjjumend
Deputy Editor-in-Chief
Prof. Dr. Larysa Klymanska
Associate Editors
Dr. Mohanasundari Thangavel
Dr. Ansari P. A.
Ms. Nusrat Yaqoob

How to cite this paper: Omo, E. E., & Omonemu, E. T. (2024). Appraisal of the Right of Women to Inheritance in African Society under Customary Law. *Journal of Policy & Governance*, *04*(02), 74-87. https://doi.org/10.33002/jpg040204
Copyright © 2024 by author(s). This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).
http://creativecommons.org/licenses/by/4.0/

Open Access

1. INTRODUCTION

Gender issues remain a prominent global topic (Megbele, 2016) with growing calls for equitable treatment of women in all areas of life. Women around the world are actively campaigning, organizing, and collaborating to improve their lives. Their objectives and approaches differ greatly: some focus on women's shelters; others campaign against pornography or advocate for complete legal equality with men. Some strive for improved maternity leave rights, access to abortion upon request, among other things. As a result, there isn't a single, cohesive women's movement (Megbele, 2016). However, they all strive to improve the status of women and advocate for their rights and interests. These movements (Megbele, 2016) are often referred to as "feminist" in nature. According to Alison (1999), feminism is linked with diverse social movements committed to eliminating women's subordination. Feminists argue that women should possess equal rights and freedoms as men do. Given their varied goals, methods, and priorities, feminist theory lacks uniformity. Many scholars have identified three primary branches of feminist theory: liberal feminism, socialist feminism, and radical feminism.[1]

The liberal perspective asserts that women possess the same rights as men, aiming to achieve both formal and sexual equality between genders (Diala, 2018). This approach has successfully led to significant gains for women's rights, such as access to education, voting privileges, and the ability to run political office. However, some feminists critique this stance because they believe it upholds values traditionally associated with masculinity. Bryson (1999) claims that socialist feminism and liberalism are similar in that they both support equal rights and opportunities for all people. But in contrast to liberalism, it emphasizes freedom from exploitation, as well as economic and social rights. Socialism helps women realize that men are oppressed too, and it promotes cooperation between the sexes to build a more just society that benefits all. In contrast, the radical feminist perspective identifies patriarchy as the most ancient and significant form of women's oppression. This viewpoint argues that women constitute an oppressed group who must fight against their male oppressors for liberation. It highlights the need for women to acknowledge men's role in their subjugation while redefining politics to encompass family dynamics and personal relationships.

This study on women's rights to property inheritance in the Urhobo region of Delta state advocates a socialist perspective, emphasizing collaboration between women and men to build an equitable society. It is crucial for women to work alongside men in order to raise awareness about the injustices caused by gender inequality. Educating men can dispel the misconception that women are inferior, although this partnership should not exclude initiatives led exclusively by women. While feminists advocate for equal rights and freedoms between genders, a concept largely embraced in Western societies, international communities have been motivated as a result (Kerr, 1993). This has prompted numerous global assemblies facilitated by organizations like the United Nations General Assembly focused on addressing gender inequality through various international instruments. An important international instrument concerning women's rights is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly. This convention provides guidelines for developing legal policies and programs to promote equality as a mean of achieving justice. Article 5 specifically obligates state parties to take action to modify customs and eliminate prejudices based on perceived inferiority or superiority between sexes or stereotypical gender roles[2]. Freeman (2009) suggests that examining customs, eliminating prejudices, and implementing measures to promote both practical and legal equality are essential tools for justice. Article 5 holds particular relevance for this research because it addresses customary laws that typically discriminate against women by denying them equal inheritance rights compared to men.[3] In general, customary laws among various tribes in Nigeria typically prohibit women from inheriting the estates of their deceased husbands and fathers. Nonetheless, certain customary laws grant women a limited right to inherit such estates (Megbele, 2016). The denial of inheritance rights under these customs presents challenges for women because widows and children often find themselves destitute after men pass away as surviving male relatives claim the deceased's estate. This research aims to explore how Urhobo tradition in Delta regards women's property inheritance rights

[1] Cited by Bryson Valerie in Feminist Debates Issues of Theory and Political Practice (Palgrave New York 1999), 5
[2] Article 5, Elimination of all forms of Discrimination against Women 1979
[3] Elimination of All Forms of Discrimination against Women, Adopted and opened for signature, ratification and accession by General Assembly resolution 34/ 180 of December 1979

within its customary law framework while assessing whether these practices align with Nigerian legislation and international legal standards on women's inheritance rights (Megbele, 2016).

The conceptual framework of this work is both descriptive and narrative, aiming to shed light on the challenges faced by women under customary laws in Nigeria. This approach also seeks to propose solutions to these issues. Succession law pertains to the transfer of a deceased individual's rights and obligations concerning their estate to heirs and successors, primarily focusing on how an estate is distributed after death. According to Black's Law Dictionary (Garner, 2004), succession involves legally or officially taking over a predecessor's office, rank, or duties; it entails acquiring rights or property through inheritance according to descent and distribution laws. Succession can involve all assets and liabilities left behind upon someone's passing. Intestate succession refers specifically to distributing an individual's property when they die without leaving a valid will it handles transferring ownership when no testamentary instructions exist from the decedent. It addresses administering real estate by personal representatives with state involvement regarding properties within its borders as well as overseeing any movable possessions belonging thereto whereby jurisdiction extends thereon (Ewelukwa, 2002).

Inheritance can be divided into two primary categories: testamentary and intestate. In cases of testamentary inheritance, the deceased has documented their wishes through a formal will, whereas in intestate inheritance, the deceased has passed away without leaving such a document. Property held by an individual can be categorized as either "personal" or "real" property.[4] Personal property encompasses all owned assets aside from land, such as movable possessions, while real property pertains specifically to land and often includes any fixtures or structures that are permanently affixed to it. The sum of an individual's personal and real property, along with any debts and financial obligations that existed prior to death, comprises their estate.[5]

This property is acquired from an ancestor through the laws of intestacy, and it can also be obtained via a bequest or devise. It involves living individuals possessing the assets left by someone who has passed away. This process functions where private ownership serves as a foundation for social and economic advancement. Succession and inheritance are essentially similar concepts but have notable distinctions worth mentioning: inheritance refers to acquiring a deceased individual's property or interests by one or more living people, while succession extends further to include legally assuming someone's position, rank, and duties, along with absorbing their rights and liabilities concerning their estate.[6]

Certain traditional practices regarding women's inheritance in many cases, women are refused the right to inherit their husband's estate, regardless of their contributions toward acquiring it. This practice is deeply rooted in patrilineal societies that grant inheritance rights exclusively to sons while excluding daughters and wives (Akinola, 2018). Such practices are discriminatory as they use gender as a basis for deciding women's inheritance rights.

1.1 The African Indigenous Urhobo People of Delta and Bayelsa State

The Urhobo people form the largest ethnic group in Delta state and speak the Urhobo language. The term "Urhobo" denotes a community of individuals rather than a specific region. Approximately two million people are speakers of this language (Ogheneyoma, 2014). Presently, the Urhobo reside in eight local government areas within Delta state: Ethiope West with its headquarters at Oghara; Ethiope East centred around Isiokolo; Okpe headquartered at Orerokpe; Sapele based in Sapele town; Uvwie located at Effurun; Ughelli North with Ughelli as its main town; Ughelli South centred on Otor-Jeremi; and Udu, which has Udu as its focal point. Additionally, they are located in Patani and Bomadi Local Government Areas within Delta state, in addition to Sagbama Local Government Area in Bayelsa state (Ogheneyoma, 2014).

1.2 History of the African Indigenous Society of the Urhobo People

The history of the Urhobo people is believed to have originated from an area in the Edo Territory (Ogheneyoma, 2014), near what are now Udo and Benin City. After the decline of the Ogiso dynasty (Ogheneyoma, 2014), several groups, speaking Urhobo and Edo, departed Udo at varying times in pursuit of more tranquil areas. Although there is not extensive documentation on their early history, evidence

[4] African Customary and Religious Law Review 1 (2020)
[5] Ibid
[6] Ibid, African Customary and Religious Law Review 1 (2020)

suggests that some members of this group arrived on present-day Urhobo land around the 14th century. However, this assumption can be challenged; oral tradition indicates they encountered other Urhobo and Edo-speaking peoples upon arrival but were eventually dominated by later settlers due to their superior power and influence. This version aligns with Williamson's research (Williamson, 1984), which notes that while exact migration dates remain unknown for Niger Delta populations moving into today's Delta region there is speculation a branch of the Urhobos could have been established there as long as 2000 years ago. The knowledgeable writer traced the origins of the Urhobo people to regions such as Egypt/Sudan, Ife, and the ancient Benin Empire. It is imperative to mention that Urhobo kingdoms existed long before the Portuguese arrived in the 15th century, a fact supported by earlier writings on the ancient Benin kingdom. Among these kingdoms, Ughelli and Agbon are considered some of the oldest in Urhoboland. The Okpe Kingdom also ranks among those with historical depth. Notably, founders of certain kingdoms within this area migrated from other nearby territories and thus shared cultural similarities; for example, both Idjerhe and Oghara have roots tracing back to migrations from Agbarha Kingdom, located in what is now the Ughelli North Local Government Area of Delta state.

1.3 Government of the African Indigenous People

The Urhobo people practice three types of government or political kingdoms namely:

a. *Gerontocracy*[7]: This government is operated by the elders and follows an age-grade system. In Urhobo land, authority is symbolized by the "Okaorho" or "Ekpe" (most senior man or elder), who receives support from other community elders. Additionally, there are the "Ighene" (youths) responsible for carrying out the decisions made by these elders.

b. *Plutocracy*[8]: This system is overseen by the affluent and influential members of society. In Urhobo land, titled Chiefs garner significant respect. The community features figures known as "Okakuru" or "Olorogun" (chiefs), who regularly convene at the Oguedion (Council of Elders/Chiefs) to resolve disputes and oversee communal affairs. They are supported by other dignitaries such as the "Olotu" (Community Police) and Otota (Speaker). Historically difficult to attain, these prestigious titles remain inaccessible for those who are impoverished today.

c. *Monarchy*[9]: *(Okelole v. Adeleke, 2004)*[10] This refers to a form of government led by a king. In Urhobo land, the monarchy was introduced relatively recently, during the late 18th and early 19th centuries. It emerged as a response to complaints from colonial authorities who preferred dealing with one individual a king or sole representative rather than navigating through multiple chiefs when exerting authority in the Urhobo Kingdoms. Consequently, monarchs were appointed nearly simultaneously across many regions within this period. Today, there are twenty-four kingdoms in Urhobo land.

1.4 Pattern of Inheritance among the African Indigenous People

The Urhobo people have cultural ties with neighbouring communities such as the Benin, Isoko, Itsekiri, and Ijaw. Similar to these groups' customary inheritance laws, the Urhobo follow the primogeniture rule. According to this practice, when a landowner dies without leaving a will (intestate), his properties are passed down exclusively to his male children as family property rather than being distributed among other blood relatives.[11] In Urhobo land, the head of the family is known as "Omo-Kpako" (eldest son). Upon the death of a parent, this role automatically falls to their eldest son. As such, he becomes responsible for leading his immediate family and acts as a trustee over the family's house and other assets on behalf of his siblings. This arrangement continues until an appointed time when extended family elders are invited by invitation from the children to distribute these properties. The inheritance practices in Urhobo culture closely resemble those found among Yoruba people under systems like “Idi-Igi” and “Ori-Ojori.” When the deceased founder of family land had multiple wives, the properties are divided according to the number of wives. Each group of children from a single wife, referred to as "Unurhorho" in Urhobo Land a term for siblings sharing the same mother within a polygamous

[7] Wikipedia>Government of Urhobo people. Assessed on 3rd July, 2022
[8] Ibid
[9] Ibid
[10] See the case of Okelole v. Adeleke [2004] 13 NWLR. (pt.890) 307
[11] Ibid

household receives their portion of the inheritance. These children can choose either to distribute it among themselves or entrust it with their mother's eldest son.

Inheritance can also be distributed based on the number of children. In this scenario, each child receives a portion of the family estate. The eldest son automatically inherits the house where his parent passed away and assumes guardianship as "Ughurie," akin to what is known in English as an ancestor. This role grants him undeniable rights to inherit his father's "Ogwa", or living room, because of its symbolic significance within Urhobo land traditions. Unlike Benin's "Igiogbe" system, where ownership passes strictly onto the eldest son and subsequently to his offspring, Urhobo inheritance practices designate that while other properties are shared among all heirs, only one special area remains perpetually tied solely with successive oldest male descendants a process ensuring continuity for ritual purposes: upon demise into ancestral realm himself the next senior boy steps up, keeping continuity intact.[12]

2. TYPES OF PROPERTY TO BE INHERITED UNDER AFRICAN INDIGENOUS SOCIETY AND PERSONS WHO CAN INHERIT

Only men are entitled to inherit land from their parents who die without leaving a will, according to Urhobo customary law. Due to the belief that they receive their share through their husband's estate, women are typically not allowed to inherit landed properties. The rationale behind this practice is that married women often bear children in their husband's household, and these children later inherit property through her marriage. Allowing female children to also inherit land from both sides their husband's family and father might result in an unequal distribution of property where the descendants of female children end up with more than those of male offspring. An unmarried daughter is permitted to inherit land from her deceased parents, but upon marriage, the property must be sold with the consent and approval of the family head. This prevents transferring ownership to her husband's household. Additionally, before any sale or transfer occurs, her brothers are granted first refusal rights on purchasing the land.

In the context of property inheritance, both sons and daughters can inherit a house from their father. However, there is an inequality in how long they hold onto this inheritance: while male children have the right to pass down the property to their own children indefinitely, female heirs are only allowed possession for their lifetime without being able to transfer it to their offspring. This practice stems from customary laws based on patrilineal descent principles within Urhobo communities. Under these customs, since a woman's children take on their father's surname rather than hers, they are considered part of another family lineage traced through paternal lines.

According to Urhobo customary law practices, both male and female offspring receive money and household items. However, the male child typically receives the largest portion from their deceased father or mother's estate.

3. RIGHT OF WIDOWS TO INHERITANCE IN AFRICAN SOCIETY

According to Urhobo customary law, inheritance is determined by blood relations. As a result, widows are not eligible to inherit their husband's property or estate directly because she is not considered part of the bloodline. Instead, a widow may only claim an inheritance through her children and can hold it in trust as their guardian. Under these customs, when a woman marries into an Urhobo family, she becomes regarded similarly to personal possessions that are distributed upon her husband's death.[13] The practice also includes levirate marriage traditions; this means if the dead had young wives at his passing they could be given in accordance with cultural norms to either his eldest son or other male relatives for care and continuation within those familial bonds. In Urhobo culture, a wife is viewed as part of her husband's property to be divided upon his passing, which means widows do not automatically have inheritance rights. In situations where a widow has no children with the deceased or no children, she can receive protection and support from her deceased husband's family only if she decides to marry into that

[12] Ibid. (Collins English Dictionary), p.26. in the context of customary Law in Nigeria, the rule of primogeniture is slightly different from the English meaning and it refers to male inheritance and not just the eldest son. Retrieved from http://www.collinsdictionary.com

[13] Ibid

family or if some member of his family is open to getting married to her. In this case, she can continue to live in her current residence like other widows, or she can move to live with her new husband.

Among the many sources that are impacted by Nigeria's legal system, customary law holds a significant position. Nonetheless, there are significant differences between tribes and communities. Nigerian women who marry under Islamic or customary law lack adequate legal protections regarding property division, in contrast to those who marry under statutory law. In a customary setting, the husband typically possesses significant authority over family property decisions. This power is frequently exercised without acknowledging the wife's contributions since assets are often registered solely in the husband's name.[14]

The kind of union a deceased person had civil, customary, or Sharia and whether they left a will are the main factors that determine the system of inheritance for their property. Nigeria's Marriage Act, which is the primary legal framework for marriages, requires people to get married in a valid civil marriage in order to guarantee that property is divided in accordance with current statutory laws. Both parties are presumed to intend to abide by the statutory inheritance rules in a civil marriage.

The laws pertaining to women's statutory inheritance rights are impacted by the deceased's religious, customary, or indigenous affiliations and beliefs. However, important legal frameworks like the Constitution, Wills Act, and Wills Laws provide clarification on Nigeria's inheritance provisions. Favoritism against women inheriting property is unconstitutional because the Federal Republic of Nigeria's 1999 Constitution forbids gender-based discrimination in areas such as inheritance. Likewise, testamentary freedom is asserted, and any gender bias in inheritances is rejected by the Wills Act and later Wills Laws. Furthermore, nondiscriminatory practices that guarantee equal distribution from estates regardless of gender are promoted by a number of state Administration of Estate Laws.[15]

Section 42(1) of the Nigerian Constitution guarantees women broad protection of their hereditary rights. However, customary practices often adhere to the rule of birthright, which favors male heirs in the distribution of wealth. Efforts have recently been created to deal with these gender differences in inheritance laws through significant legal reforms.[16]

Over the past twenty years, the Supreme Court and the Court of Appeal of Nigeria have rendered significant rulings concerning the inheritance entitlements of women, particularly within the Igbo communities situated in the eastern region of the nation. These rulings underscored the manner in which discriminatory customary laws contravene established constitutional tenets. Conversely, women of Yoruba descent in western Nigeria appear to adhere to comparatively more progressive and egalitarian inheritance customs (Agbonika, 2013). Igbo customs are followed in inheritance practices in Eastern Nigeria, which includes the states of Abia, Anambra, Ebonyi, Enugu, and Imo. When it comes to inheriting a father's property, such as a home or land, male children are typically given preference over female children in these areas (Agbonika, 2013).

Widows characteristically do not inherit their late husband's property under Igbo customary law. They typically have possessory rights rather than ownership since they are permitted to keep the house and a piece of land. This custom is predicated on the notion that inheritance ought to follow bloodlines, and widows have no proprietary claims because they are not regarded as their husbands' blood relatives. Furthermore, under official marriage ordinances, mothers are not respected as wives, even though native laws recognize the children of these marriages as legitimate heirs. If an individual dies without leaving a will, their estate is divided according to Yoruba customs. The first step is per stripe distribution, which divides the estate equally among the deceased's wives. The offspring of each wife, regardless of gender, are then given an equal share of the estate. This method of proportional distribution among each wife's children can lead to disputes in polygamous families. Another Yoruba tradition called "Ori Ojori" ensures that the assets of a dead person are distributed equally among all the children. This approach promotes fairness and helps prevent conflicts. Therefore, according to Yoruba custom, daughters have the same hereditary right to the father's property as sons. However, unless it is proven that the husband gave her the property during his lifetime, women generally do not inherit their husband's property, according to indigenous Yoruba law and customs.[17]

---

[14] https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4986
[15] Ibid
[16] See section 42 (1) & (2) of the 1999 constitution of the Federal Republic of Nigeria.
[17] Indigenously known as “idi igi” & “Ori ojori” methods of distribution”

Islamic succession follows a set of rules that require adherence to Islamic rules to establish eligibility. Only one third of an estate can be divided at the discretion of the heirs; the remaining part is divided according to the predetermined parts. This procedure is governed by the Malikischool of Islamic law in Nigeria, which recognizes three bases of inheritance: clientage, blood ties, and marriage. Legal participants (legal shareholders), residual heirs, and distant relatives are the three types of heirs, and each has specific rights. For example, if there are no separate heirs, a woman can receive a quarter; depending on the circumstances, girls can get half or two thirds. These rules show that different family relationships are properly considered in Islamic inheritance proceedings.

According to Islamic law, the Quran categorically upholds women's inheritance rights, establishing a precedent that the religion acknowledges. Generally speaking, women inherit half of what men inherit, but occasionally, a mother may get an equal share. This implies that the rights and obligations of women are not wholly subordinate to men's from God's perspective.[18] In 1997, the Court of Appeal of Nigeria took a progressive position in *Mojekwu v. Mojekwu*,[19] challenging specific Igbo traditions that discriminated against women when it came to inheritance rights. However, due to procedural irregularities in the handling of the appeal, the Supreme Court cancelled this advancement. In addition, the Supreme Court warned against declaring the Oli-Ekpe custom of Nnewi offensive, as it could fuel opposition to customs that do not consider women's role. Critics say this conservative approach emphasizes respect for customary laws, even when they seem unfair based on current standards.

Despite initial resistance, the Supreme Court has recently affirmed the constitutional provisions safeguarding the inheritance rights of Nigerian women from their deceased progenitors in the pivotal case of *Ukeje v. Ukeje*[20]. This judicial determination has strengthened a woman's entitlement to her deceased father's estate, notwithstanding the apprehensions voiced by certain critics regarding the modification of entrenched customs. The lead judgement in this case was delivered by Hon. Justice Rhodes-Vivour, who said:

> "A female offspring possesses the entitlement to inherit from her deceased father's estate, irrespective of the conditions surrounding her conception. Consequently, Section 42(1) and (2) of the constitution, which bestows upon every Nigerian a fundamental right, are transgressed by the Igbo customary law that precludes a female child from engaging in how her late father's estate was divided. Given that it contravenes Sections 42(1) and (2) of the Constitution, the aforementioned discriminatory customary law is rendered null and void."

This historic ruling upheld constitutional provisions by confirming a woman's right to inherit her late father's estate. Nonetheless, some groups continue to express dissent and mixed reactions to the Supreme Court's decision in Ukeje, citing initial concerns expressed in Ejikeme's case regarding the possibility of upsetting long-standing customary norms. Regretfully, in spite of the courts' well-informed rulings on discriminatory inheritance laws in eastern Nigeria, ignorance and those who adhere to traditional customs continue to oppose the complete abolition of this practice.

The tradition originally forbade women from inheriting property. In areas where primogeniture is practiced, land and landed properties are usually inherited according to the customary law of inheritance by the oldest son, which is predominantly patrilineal (Obi & Aduma, 2020). Other children may not receive any inheritance at all, only this firstborn son. The man's brother or uncle becomes eligible for inheritance if there is not a male heir or if he has not reached adulthood (Animashun and Oyeneyin, 2000). Though this arrangement is only temporary and does not correspond to actual inheritance rights, women in these families are permitted to use specific land parcels based on their requirements. As a result, when a family member passes away, sisters or wives have no right to ownership of such properties. In the Eastern Nigerian case of *Uboma v. Ibeneme*[21], the court decided that daughters could not inherit their father's estate. When a man has several wives, his father's land is jointly inherited by the eldest sons of each marriage. In the case of *Ejiamike v. Ejiamike*,[22] it was decided that widows who have male heirs are entitled to manage the intestate estate rather than inherit it. In addition to having sons or not, a woman's character and behavior also play a part in determining her rights or interests in her husband's estate. She

---

[18] https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4986. The inheritance rights of women in Nigeria, By Mujibat Oshod

[19] Mojekwu v. Mojekwu (1997) Lpelr-13777(Ca), Uke V Iro (2001), 11 NWLR (Pt. 723)196. Muojekwu v. Ejikime (2000) 5NWLR (Pt. 657) 403

[20] (2014) LPELR-22724(SC)

[21] (1967) E M L R 251. 14

[22] (1972) 2 ENLR, 11.

still has the right to live in her husband's house and cultivate his private property whenever she pleases if she has sons. Despite this, she still looks after her young sons, who are the legitimate heirs, rather than acting as the land's owner. She is entitled simply to reside in the house with her children for life or until she decides to leave if she has only daughters and no male children. She must, however, continue to behave well in order to retain this privilege; if the family finds her character lacking, she is not permitted to stay in the house or work the land.[23]

Furthermore, the ruling in *Nezianya v. Okagbue*[24] highlights the status of a widow without male offspring concerning her husband's property. In this case, after her husband's death, the widow began renting his house to tenants. Using her business skills, she sold part of the land and built two or more huts on another part for rental. When she attempted further land sales with possibly broader investment goals in mind, objections came from the family of her late husband, who argued that under Onitsha's custom, such actions were not within her rights. She only had one daughter who predeceased her but left behind two daughters the plaintiffs in this legal matter. The plaintiffs brought a case against their grandfather's family members, who had previously filed an action in the Native Court. They challenged the widow's entitlement to transfer her late husband's property, claiming they were entitled to exclusive possession and ownership of the land and huts built by their widowed grandmother. However, the Supreme Court dismissed their claim, ruling that according to Onitsha native law and custom, a widow's occupation of her deceased husband's land is not considered foreign or adverse; regardless of how long she possesses it, this does not grant her ownership rights over his family's property. Additionally, without familial consent, she cannot dispose of such assets. The court also expressed as an aside that if a man dies without male heirs, his real estate passes to his family rather than being inherited by female descendants or his widow (Ikpeze, 2009).

Over two decades later, the Supreme Court upheld their decision in Nezianya with the case of *Nzekwu v. Nzekwu*.[25] In this ruling, it was determined that upon her husband's death, a widow without male children possesses only a right to reside in her late husband's building or part of it, contingent upon maintaining good behavior. Although she may interact with and make decisions about the property only with family consent, over time she cannot claim ownership of it for herself. Her connection to the house is limited solely to possession rather than ownership; therefore, she does not have the authority to transfer or sell it. The underlying reasoning behind this law is based on cultural expectations that women will marry and eventually leave their parental homes to join their husbands' families as integrated members. As a result, most of the assets inherited, like land, typically stay within the founder's family and cannot be transferred to another. Additionally, there is a widespread belief that a wife is considered her husband's property to be passed on following his passing[26]. This perspective has been widely accepted by both Nigerians and Europeans in earlier times. Numerous early writers and high court judges have recognized this perspective; nonetheless, it is unattractive to many Nigerians today and faces strong opposition from women.

4. LEGAL FRAMEWORK AND INSTITUTIONAL REGULATIONS ON WOMEN INHERITANCE RIGHT

4.1 The Constitution of the Federal Republic of Nigeria 1999 (As Amended)[27]:

The 1999 Constitution of the Federal Republic of Nigeria serves as the highest legal authority in the country, and its provisions hold binding power over every person and body across Nigeria. The Nigerian Supreme Court has significantly advanced women's inheritance rights through landmark rulings such as *Ukeje v. Ukeje*[28] in 2014. These verdicts uphold women's entitlement to inherit from their parents who passed away irrespective of birth circumstances, thereby, challenging discriminatory customary practices that have traditionally disadvantaged women regarding inheritance matters. Below are additional details about women's inheritance rights in Nigeria.

The Constitution of the Federal Republic of Nigeria, enacted in 1999, assures that all citizens are afforded fundamental human rights, inclusive of the right to inheritance. In instances of childless

[23] Ibid
[24] 1963) 1 All NLR 352
[25] (1989) 2 MWLR (Pt. 104) 317
[26] OVC Ikpeze, op cit, p 147. 13 (1967) E M L R 251. 14 (1972) 2 ENLR, 11. 15 A O Obilade, op cit, P 310
[27] Constitution of the Federal Republic of Nigeria, 1999 Cap. C23 Laws of the Federation (2004) as Amended (2011) S. 1(1)
[28] Ukeje v Ukeje (2014) Lpelr-22724(SC)

marriages, a widow is entitled to receive one-fourth of her deceased spouse's estate. Conversely, if the marriage has produced offspring, she is entitled to one-eighth of the estate. Additionally, under customary law, widows possess the right to inherit property belonging to their deceased husbands. The legal framework categorically prohibits any form of discrimination or denial concerning women's rights to inheritance; individuals who contravene this regulation may face penalties of up to five years of imprisonment and/or fines amounting to N500 million. Women residing in Eastern Nigeria have notably gained from the Supreme Court's landmark ruling in *Ukeje v. Ukeje*, which liberated them from the oppressive traditions that had historically obstructed their rights in intestate succession, to inherit statutes. Any legal provision that contradicts the Constitution's stipulations, whether it be derived from common law, statutory law, or customary law, shall be rendered null and void. The 1999 Constitution guarantees both explicit defense against prejudice and equitable rights for all citizens under the law. Section 17(1) of the Constitution articulates that "The State Social Order is founded on ideals of freedom, equality, and justice."[29]

In a similar vein, Section 17(2) (a) states that in support of social justice: (a) all citizens shall enjoy equal rights, responsibilities, and opportunities under the law. In alignment with this principle, Section 42(1) of the 1999 Constitution asserts that no Nigerian citizen should face discrimination simply because they belong to a specific community or ethnic group or due to their place of origin, gender, religion, or political beliefs.

> 'be covered specifically by or in the course of any Nigerian law that is currently in effect. To limitations or restrictions that do not apply to Nigerian citizens of different communities, ethnic groups, place of origin, sex, religion, or political beliefs, or….'

Also, Section 42(2) of the 1999 Constitution[30] provides;

> "No Nigerian citizen shall face any disadvantage or denial of rights solely due to the conditions under which they were born. Additionally, Section 43(1) of the Constitution guarantees every Nigerian citizen the right to own real estate anywhere within Nigeria."

The above statutory provision implies that the constitution ensures equal rights for all citizens, regardless of their birth circumstances. Consequently, in terms of inheritance rights, it protects individuals from discrimination on the basis of gender. This constitutional safeguard assures the rights of girls as well as married women and widows in Nigeria.

4.2 The Marriage Act[31]

According to the Marriage Act, a married woman has an equal right to share in family assets acquired during marriage and participate in decisions regarding their disposal both during the marriage, after its dissolution, or upon her husband's death. This Act safeguards not only married women but also widows and their children against detrimental customary practices while ensuring their inheritance rights are protected following the husband's passing.

4.3 Matrimonial Causes Act[32]

This Act applies to custody cases resulting from the dissolution of civil, customary, and Islamic marriages. Under this legislation, courts throughout the Federation of Nigeria can determine that women are entitled to a portion of family property upon divorce based on principles of equity. In all custody issues, the Act mandates that the child's best interest must be prioritized. Additionally, it stipulates that if her husband passes away and leaves no will (intestate), a married woman is entitled to at least one-third of his estate.[33]

4.4. The Wills Law of Delta State, 2006[34]

It is significant to remember that the Wills Law Cap 133 of 1959 governs the states that made up the former Western Nigeria, and the majority of them have since enacted this law locally. This law states

---

29 Ibid. S. 17(1)"
30 The Constitution of the Federal Republic of Nigeria, 1999 Cap. C23 Laws of the Federation 2004 as amended (2011). Sec. 42(2)
31 The Marriage Act Cap.M6, Laws of Federation of Nigeria 2004.
32 The Matrimonial Cause Act Cap, M7, Laws of Federation of Nigeria 2004.
33 Ibid
34 The Wills Law. Cap 204, Laws of Delta State, 2006.

that all people named in a will become beneficiaries, regardless of their gender or birth circumstances, provided the will is properly created, which requires that it be written and signed by the testator in front of two witnesses who attest to it, simultaneously. According to Wills Law Section 3[1], each person has the right, at the time of their death, to use a will to distribute or dispose of all of their entitled properties, whether in law or equity. Furthermore, Section 4 specifies who may request a court order if impacted by this distribution; these individuals include the spouse or any of the deceased's children, and any parent, brother, or sister who received all or a portion of the deceased's financial support just prior to their death.

4.5 The United Nations Universal Declaration of Human Rights (UDHR), 1948[35]

The Universal Declaration of Human Rights (UNDHR) was adopted by the United Nations General Assembly on December 10, 1948. Article 1 of this declaration asserts that all individuals are equal, regardless of sex, race, color, religion, or social status. This document reinforced a commitment to human rights and affirmed the dignity of both men and women.

4.6 The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979[36]

This legal document reaffirmed the principle of gender equality for both men and women and was ratified by the United Nations General Assembly in 1979. The objective of the articles contained within this Convention is to compel member states to eradicate all varieties of discrimination against women. Consequently, CEDAW is often designated as the International Bill of Rights for Women. Any distinction, exclusion, or limitation based on sex that seeks to obstruct or impede women's acknowledgment, enjoyment, or exercise of human rights and fundamental freedoms in political, economic, social, cultural, civil, and other spheres on an equal footing with men is classified as prejudice against women, as articulated in Article 1 of the Convention. Thus, this characterization of discrimination encompasses actions such as denying a widow or female child the entitlement to inherit property solely on the basis of her gender.

4.7 International Covenant on Civil and Political Rights (ICCPR) 1966[37]

The United Nations General Assembly adopted this treaty in 1966, and it became effective in 1976. Article 3 of the treaty ensures that men and women have equal rights to enjoy their civil and political freedoms. In Nigeria, these civil and political rights are outlined in Chapter Four of the Constitution of the Federal Republic of Nigeria from 1999. These include rights such as owning immovable property and protection against discrimination based on sex.

4.8 The African Charter on Human and People's Right (ACHPR), 1981[38]

African nations have adopted this first and most comprehensive human rights instrument. This treaty covers civil and political rights in addition to socioeconomic rights. Through the African Charter on Human Rights and People's Rights (Ratification and Enforcement) Act, 1983, Nigeria ratified this treaty. It should be mentioned that the Charter's Articles 2 and 3 guarantee everyone's equality before the law. While property ownership rights are guaranteed by Article 14, Article 18(3) requires the state to defend women's and children's rights and strive towards ending discrimination against them in conformity with international agreements and declarations.[39]

4.9 The Optional Protocol to the African Charter on Human and Peoples Right on the Right of Women in Africa, 2003[40]

The protocol's main objectives were to reaffirm gender equality and establish a framework for upholding women's rights in Africa. According to Article 1, discrimination against women includes any

---

35 UNDHR, 1948. Ese Malemi Nigeria Constitutional Law, (3rd Edition) p.122-123"

36 The Convention on The Elimination Of All Forms of Discrimination Against Women (CEDAW), 1979. Nigeria ratified this convention on 13th of June, 1985. https:/thinteret.ohchr.org. Assessed on 8th May, 2022"

37 ICCPR, 1966. See Compass: manual for human Rights Education with young people."

38 African Charter on Human and Peoples Rights (ACHPR). This charter was domesticated in Nigeria in accordance with the C.F.R.N, 1999. S. 12(1).

39 See also ACHPR, 1981, Art. 28

40 The Optional Protocol to the African Charter on Human and Peoples Right on the Right of Women in Africa, 2003. This protocol came into force on 25th November; 2005.Nigeria has also ratified this protocol.

sex-based distinction, exclusion, or restriction that compromises or nullifies women's recognition, enjoyment, or exercise of human rights and fundamental freedoms across all areas of life, irrespective of marital status. It also defines violence against women as any act perpetrated upon them that causes or threatens financial harm. In addition, harmful practices are characterized by actions, attitudes, and behaviors that negatively impact the essential human rights of women and girls. As outlined in Article 2(3), states are urged to actively oppose every kind of discrimination through suitable legislative measures and institutional initiatives.

Article 21[41] of the protocol also provide thus:

I. A widow is entitled to remain in their marital residence and receive a just portion of her husband's property inheritance. As long as the house is hers or she inherited it, this right endures even if she gets married again.
II. Both men and women are entitled to an equitable inheritance of their parents' assets.

4.10 African Charter on the Right and Welfare of the Child, 1990[42]

This charter makes it clear that all children, irrespective of their gender or other characteristics, are entitled to the freedoms and rights it outlines. Furthermore, Article 21 requires the government to take the necessary steps to end detrimental social and cultural customs that compromise the welfare and dignity of children, like child marriages.

The International Conventions mentioned earlier clearly indicate that countries within the international community strive to protect women's fundamental rights worldwide. Consequently, Urhobo women in Nigeria can leverage these treaties to assert their rights if they are violated or threatened, especially regarding inheritance issues. However, enacting laws is one thing; implementing them is another challenge altogether. In Nigeria today, despite numerous laws intended to safeguard women's rights, discrimination persists due to various customary law practices, such as those among the Urhobo. For the law to remain pertinent and effective, it must address the diverse nature of human experiences. It is essential for citizens to be informed about key statutory provisions and understand how these laws should be fully implemented; furthermore, sanctions should be imposed on individuals who deliberately disregard them.

5. RECOMMENDATION

Reiterating Nigeria's adherence to the numerous international treaties it has ratified is crucial to addressing the discriminatory customs that the country has adopted against women. Among these are the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the United Nations Universal Declaration of Human Rights, and the African Charter on Human and Peoples' Rights (ACHPR). Making these conventions domestic law is the next crucial step after signing them. In order to improve its reputation in the international community, Nigeria should act to ratify and implement these international treaties.

Second, the National Assembly ought to pass laws that forbid and criminalize female disinheritance in conformity with the Federal Republic of Nigeria's 1999 Constitution. All 36 of the Federation's states ought to enact this legislation. Any individual or organization engaging in discriminatory actions directed at women must face harsher penalties under the Act. Thirdly, there is a need for appropriate orientation and awareness programs to educate all Nigerians about women's rights, enabling women to recognize and defend their rights when they are violated. This enlightenment campaign should be a joint responsibility involving traditional rulers, religious leaders/bodies, community leaders, and family heads who serve as the custodians of cultural practices since customary laws are deeply embedded in people's culture. Fourthly, it is important to encourage the writing of a will. Making wills is crucial for individuals to prevent their estates from being subject to customary inheritance rules.

---

41 Ibid. Art. 21

42 African Charter on the Right and Welfare of the Child, 1990. This charter was adopted in 1990 and came into force in 1999. www.seahipai.org, accessed 18 May 2022.

6. CONCLUSION

In conclusion, Nigeria has made significant progress in ensuring and protecting women's rights to inherit. However, achieving greater promotion of gender equality and establishing a culture where everyone, regardless of gender, has equal access to opportunities and rights require constant work and attention. According to a careful analysis of the Federal Republic of Nigeria 1999 Constitution and other domestic laws passed by the federal and state governments, adequate safeguards against discrimination against women have been put in place under Nigerian law. This alignment shows that Nigeria complies with international legal norms pertaining to girls' and widows' rights.

7. REFERENCES

Agbonika, J. A. M. (2013). The Right of a Woman to Succession and Inheritance under Native Law and Custom in Nigeria: The Need for Reform. *Kogi State University B. Annual Journal of Public Law*, *5*(13).

Akinola, A. O. (2018). Women, Culture, and African's Land Reform Agenda. *Frontiers in Psychology*, *9*, 2234. https://doi.org/10.3389/fpsyg.2018.02234.

Alison, M. J. (2000). Feminist Ethics. In: Hugh LaFollette, *The Blackwell Guide to Ethical Theory*, pp. 433-460. Blackwell.

Animashun, T. O. G., & Oyeneyin, A. B. (2002). *Law of Succession, Wills and Probate in Nigeria*. Lagos, Nigeria: MIJ Publishers.

Bryson, V. (1999). Feminist Debates Issues of Theory and Political Practice. New York: Palgrave.

Diala, A. C. (2018). The Concept of Living Customary Law: A Critique. *Journal of Legal Pluralism and Unofficial Law*, *50*(1). https://dx.doi.org/10.2139/ssrn.2992007.

Ewelukwa, U. U. (2002). Post–Colonialism, Gender, Customary Injustice: Widows in African Societies. *Human Right Quarterly*, *24*(2), 424-486. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2358561.

Freeman, M. A. (2009). Women Development and Justice. Using the International Convention on Women's Rights. In: Kerr (ed.), Ours by Right: Women's Rights as Human Rights. Op cit. p 93.

Garner, B. A. (ed.) (2004). *Black's Law Dictionary* (8th Edn). Minnesota: Thomson West.

Ikpeze, O. V. C. (2009). *Gender Dynamics of Inheritance Rights in Nigeria, Need for Women Empowerment*. Onitsha: Folmech Printing & Pub. Co. Ltd.

Kerr, J. (ed.) (1993). *Ours by Rights: Women's Right as Human Rights*. London: Zed Books.

Megbele, O. J. (2016). A Comparative Study of Women's Rights of Inheritance in Nigeria Under Islamic Law and Some Customary Laws.. Delta State University Abraka, Nigeria, p. 29.

Obi, H. O., & Aduma, O. C. (2020). Contemporary Judicial Response to Women's Succession and Inheritance Rights in Nigeria: A Heave to Gender Discrimination. *African Customary and Religious Law Review*, *1*, 42-48. https://www.nigerianjournalsonline.com/index.php/ACARELAR/article/view/2261.

Ogheneyoma, O. (2014). Customary` Land Tenure System of the Urhobo People. Delta State University Abraka, Nigeria.

Williamson, K. (1984). Practical Orthography in Nigeria. Ibadan: Heinemann Educational Books.

AUTHOR'S DECLARATIONS AND ESSENTIAL ETHICAL COMPLIANCES

Author's Contributions (in accordance with ICMJE criteria for authorship)

Contribution	*Author 1*	*Author 2*
Conceived and designed the research or analysis	Yes	Yes
Collected the data	Yes	No
Contributed to data analysis & interpretation	Yes	Yes
Wrote the article/paper	Yes	Yes
Critical revision of the article/paper	Yes	Yes
Editing of the article/paper	Yes	Yes
Supervision	Yes	No
Project Administration	Yes	Yes
Funding Acquisition	No	No
Overall Contribution Proportion (%)	60	40

Funding
No funding was available for the research conducted for and writing of this paper. Therefore, acknowledging any support agency is not applicable in case of this research or the written work. However, informal support of institutional supervisors, colleagues and respondents is duly acknowledged.

Research involving human bodies or organs or tissues (Helsinki Declaration)
The author(s) solemnly declare(s) that this research has not involved any human subject (body or organs) for experimentation. It was not a clinical research. The contexts of human population/participation were only indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or ethical obligation of Helsinki Declaration does not apply in cases of this study or written work.

Research involving animals (ARRIVE Checklist)
The author(s) solemnly declare(s) that this research has not involved any animal subject (body or organs) for experimentation. The research was not based on laboratory experiment involving any kind of animal. Some contexts of animals are also indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) does not apply in cases of this study or written work.

Research on Indigenous Peoples and/or Traditional Knowledge
The author(s) solemnly declare(s) that this research has not involved Indigenous Peoples as participants or respondents, with the documentation of their Indigenous Knowledge. Some other contexts, if any, of Indigenous Peoples or Indigenous Knowledge are only indirectly covered through literature review. An Ethical Clearance 'to conduct research on indigenous peoples' Indigenous knowledge is also not relevant. Therefore, an Ethical Clearance (from a Committee or Authority) or prior informed consent (PIC) of the respondents or Self-Declaration in this regard does not apply in cases of this study or written work.

Research involving Plants
The author(s) solemnly declare(s) that this research has not involved the plants for experiment or field studies. The contexts of plants were only indirectly covered through literature review. Thus, during this research the author(s) obeyed the principles of the Convention on Biological Diversity and the Convention on the Trade in Endangered Species of Wild Fauna and Flora.

(Optional) Research Involving Local Community Participants (Non-Indigenous)
The author(s) solemnly declare(s) that this research has not involved local community participants. This study did not involve any child in any form directly. The contexts of different humans, people, populations, men/women/children and ethnic people are also indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or prior informed consent (PIC) of the respondents or Self-Declaration in this regard does not apply in cases of this study or written work.

(Optional) PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analyses)
The author(s) has/have NOT complied with PRISMA standards. It is not relevant in case of this study or written work.

Competing Interests/Conflict of Interest
Author(s) has/have no competing financial, professional, or personal interests from other parties or in publishing this manuscript. There is no conflict of interest with the publisher or the editorial team or the reviewers.

Attribution and Representation
All opinions and mistakes are the author(s)' own and cannot be attributed to the institutions they represent. The publisher is also not responsible either for such opinions and mistakes in the text or graphs or images.

RIGHTS AND PERMISSIONS

Open Access. This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license, and indicate if changes were made. The images or other third-party material in this article are included in the article's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this license, visit http://creativecommons.org/licenses/by/4.0/.

***

To see original copy of these declarations signed by Corresponding/First Author (on behalf of other co-authors too), please download associated zip folder [Ethical Declarations] from the published Abstract page accessible through and linked with the DOI: https://doi.org/10.33002/jpg040204.